



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

January 13, 2017

**VIA FASCIMILE AND  
FIRST CLASS MAIL**

William M. Guerry  
Jonathan K. Cooperman  
Kelley Drye & Warren LLP  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007

Dear William and Jonathan:

Big Ox Energy's (Big Ox) January 10, 2017, response to the EPA's Clean Air Act 114 is not a complete response to the information requested. The EPA clearly has the authority to request the information and documentation set forth in Appendix B to the Information Request. Section 114(a) of the Clean Air Act (the Act), 42 U.S.C. § 7414(a) authorizes the Administrator of the EPA to require "any person who owns or operates any emission source, who manufactures emission control equipment" or "is subject to any requirements under" the Act to provide information for the purpose of determining whether any person is in violation of any provision of the Act. The authority is delegated to the Director of the Air and Waste Management Division, EPA Region 7, in Lenexa, Kansas.

Contrary to the statement in your letter, the EPA has the authority to request information relative to Big Ox's compliance with the CAA and its Air Permit, even in states with authorized programs. Nebraska's air permitting program is an authorized program under the Clean Air Act, approved by the EPA pursuant to Section 110. As such, the EPA maintains its oversight authority, including its authorities to investigate and enforce potential noncompliance. This is clearly reflected in Sections 113 and 114 of the Clean Air Act, as well as Permit CP15-008, General Condition I.(B), which states that:

(B) Holding of this permit does not relieve the owner or operator of the source from the responsibility to comply with all applicable portions of the Nebraska Air Quality Regulations and any other requirements under local, State, or Federal law. Any permit noncompliance shall constitute a violation of the Nebraska Environmental Protection Act and the Federal Clean Air Act, and is grounds for enforcement action or permit revocation.  
*(Chapter 41 and Chapter 17, Section 011)*

In addition, Region 7 has been coordinating with the NDEQ air program to address the ongoing issues at the Big Ox plant and the surrounding community.

In the Clean Air Act Amendments of 1990, Congress enacted Section 112(r)(1), also known as the General Duty Clause (GDC). It applies to any facility where listed substances and extremely hazardous



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substances are present regardless of inventory or quantity. GDC is a performance based authority recognizing that owners and operators have a general duty and responsibility to prevent and mitigate consequences of chemical accidents. Both methane and hydrogen sulfide are extremely hazardous substances and subject to the GDC.

Your response to the Information Request sent on December 22, 2016, was due on January 6, 2017. Additional time to submit a complete response has not been requested. As noted in the cover letter to the 114 request, “[F]ailure to respond completely and truthfully to this request for information may subject Big Ox LLC to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.” The Act permits the EPA to seek the imposition of penalties up to \$44,539 for each day of continued noncompliance.

In your letter you indicated that additional information may be produced. The EPA requests that a complete response to original 114 be produced on or before January 27, 2017. We again request that the responsive information contain the certifications previously requested. Thank you in advance for your attention to this matter. Please do not hesitate to contact me at (913) 551-7288 if you have any questions.

Sincerely,

/s/ Anne R. Rauch  
Senior Attorney Advisor